

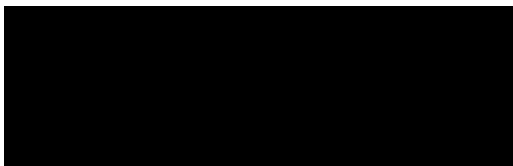
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U.S. Department of Homeland Security
Citizenship and Immigration Services

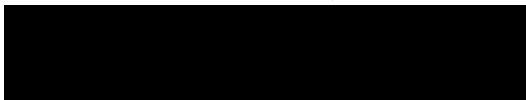
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: WAC-02-129-50077 OFFICE: CALIFORNIA SERVICE CENTER

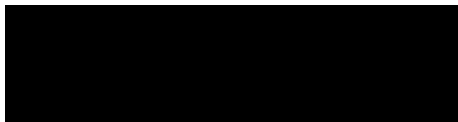
DATE: FEB 06 2004

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner.
Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition and matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner sells restaurant equipment and designs kitchens. It employs 20 persons and has a gross annual income of \$9 million. It seeks to employ the beneficiary as an architectural designer/drafter. The director denied the petition because the petitioner failed to establish that the position qualifies as a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a

specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The I-129 petition described the position as follows:

Generate architectural submission and design plans and details based on project specifications and using AutoCadd. Manage drawings and documents based on the office environmental quality standards. Prepare a set of foodservice drawings depicting plumbing and electrical requirements, and exhaust requirements along with fabrication details, all in accordance with local Health Dept. regulations.

The letter accompanying the I-129 petition stated that candidates must possess skills and knowledge about design techniques, principles, and the tools and instruments used to produce architectural drawings, illustrations, plans, blueprints, and models; knowledge about algebra, geometry, calculus, and statistics; and knowledge of equipment, tools, and mechanical devices. The letter declared that a bachelor's degree in architecture is the minimum requirement to perform the duties, and further stated that according to the *Occupational Employment Statistics*, 2001 edition, the minimum educational requirement for architectural drafter/designer positions is a bachelor's degree. The letter claimed that the beneficiary's duties will not require the supervision of a licensed architect because the designs will not involve the building's structural or construction components, and will involve only the building's interior layout, specifically the kitchen and dining areas. The petitioner also submitted a job posting for the position and two advertisements.

On July 18, 2002, the director requested additional information: a detailed job description; evidence that the position qualifies as a specialty occupation; and evidence of the beneficiary's

nonimmigrant status.

In response, counsel submitted a letter delineating the job description, and evidence of the beneficiary's nonimmigrant status. The letter portrayed the job duties and the percentage of time that would be spent performing the duties as follows:

1. Plan, conceptualize and design any type of food service establishment under the supervision of [the] [d]esign/[c]ontract [s]ales [m]anager based on preliminary concept studies, feasibility and environmental impact studies, client objectives, [and] requirements and budget. Level of responsibility is technical. Percentage of Time Spent: 25%; Hours Spent (per 40 hrs[.] work week): 10 hrs.
2. Consult with the [d]esign/[c]ontract [s]ales [m]anager and owner to determine functional and spatial requirements of the structure. Level of responsibility is researcher and technical. Percentage of Time Spent: 20%; Hours Spent (per 40 hrs[.] work week): 8 hrs.
3. Prepare information regarding design, specifications, materials, color, equipment, estimated costs, and time. Analyst and technical level. Percentage of Time Spent: 10%; Hours Spent (per 40 hrs[.] work week): 4 hrs.
4. Prepare schematic and design development drawings using computer-aided design (CAD) technology. Develop client prototype standards and details. Level of responsibility is analyst and technical. Percentage of Time Spent: 45%; Hours Spent (per 40 hrs[.] work week): 18 hrs.

The letter further explained that the position qualifies as a specialty occupation under the second and fourth criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The position is highly technical and complex in nature, the letter claimed, as it requires analytical and engineering skills, and every architectural plan must satisfy federal and state ordinances including safety, fire, building code, and health zoning. Such duties, the letter averred, require in-depth knowledge of architectural principles and theories, conceptual design, and mathematics; the letter attested that candidates must possess a bachelor's degree to have this knowledge.

On September 18, 2002, the director denied the petition, stating that the petitioner failed to establish that the position qualified as a specialty occupation. The director, citing the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), found that the duties of the proffered position resemble those performed by drafters, and the director stated that, according to the *Handbook*,

employers prefer applicants for drafter positions who have completed postsecondary school training in drafting offered by technical institutes, community colleges, and some four-year colleges and universities. The director stated that the petitioner did not furnish evidence that would establish one of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On October 18, 2002, counsel submitted an appeal. Counsel attests that the proffered position qualifies as a specialty occupation under the second and fourth criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

To establish that a position qualifies as a specialty occupation, employers must satisfy one of four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The first criterion requires the petitioner to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. On appeal, counsel contends that a baccalaureate degree is required to perform the beneficiary's duties. In the letter accompanying the petition, the petitioning entity stated that the beneficiary would be part of its food service design group. The letter stated that the petitioner's clients include architects, restaurants, corporations, hotels, the military, schools, universities, and golf clubs.

In determining whether a position qualifies as a specialty occupation, Citizenship and Immigration Services (CIS) looks beyond the title of the proffered position and judges, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The *Handbook* is instructive because it provides a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into an occupation and advance within that occupation.

According to the *Handbook*, the duties of the proffered position are comparable to those performed by interior designers. With respect to training, qualifications, and advancement, the *Handbook* explains that a bachelor's degree is required for most entry-level design positions. Given the complexity of the beneficiary's duties, the proffered position would require a bachelor's degree in a related field. Furthermore, the *Handbook* states, at page 122:

Interior design is the only design field subject to government regulation. According to the American

Society for Interior Designers, 19 States and the District of Columbia require interior designers to be licensed or registered.

No evidence in the record establishes whether the State of California requires interior designers to be licensed or registered or whether the beneficiary is qualified to perform the duties of an interior designer.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the State of California requires interior designers to be licensed or registered and whether the beneficiary is qualified to perform the duties of an interior designer. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's September 18, 2002 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.